In Re SOUTHEAST BANKING CORPORATION, Debtor.

William A. BRANDT, Jr., Plaintiff-Appellant, Cross-Appellee,

v.

FIRST UNION CORP., First Union National Bank of Florida, Defendants-Appellees, Cross-Appellants,

Federal Deposit Insurance Corporation, Third-Party Defendant-Appellee.

No. 95-4655

United States Court of Appeals, Eleventh Circuit.

Sept. 3, 1996.

Chapter 7 trustee brought action against assignee of insolvent bank's assets from Federal Deposit Insurance Corporation (FDIC), alleging breach of merger exploration contract with debtor-bank holding company and related claims. FDIC intervened. The United States District for the Southern District of Florida, No. 94-1803-CIV-DTKH, Daniel T.K. Hurley, J., dismissed complaint, and trustee appealed. The Court of Appeals held that complaint failed to state claim.

Affirmed.

1. **Federal Courts ⇔ 794**

Federal Court of Appeals reviews district court's dismissal of complaint for failure to state claim, accepting as true plaintiffs' allegations. Fed. Rules Civ. Proc. Rule 12(b)(6), 28 U.S.C.A.

2. **Bankruptcy ⇔ 2154.1**

Banks and Banking ⇔ 67

In Chapter 7 case of debtor-bank holding company,

trustee could not bring action against former merger partner for disclosing bank's financial information to banking regulators, though trustee alleged that regulators later wrongly declared bank insolvent as result and that bank was solvent and profitable at time, merger agreement prevented partner from obtaining financial position in debtor or bank unless it bid at Federal Deposit Insurance Corporation (FDIC) auction, and merger partner eventually acquired bank's assets from FDIC; regulators did not believe that bank was solvent and profitable, regulators, rather than merger partner, caused any damage to bank, and trustee was merely substituting merger partner for regulators because he could not sue for regulators' discretionary act of closing bank.

Appeals from the United States District Court for the Southern District of Florida.

Before TJOFLAT, Chief Judge, BLACK, Circuit Judge, and REAVLEY* , Senior Circuit Judge.

PER CURIAM:

Brandt is the Chapter 7 bankruptcy trustee for the estate of Southeast Bank Corporation (the Holding Company). The Holding Company owned all of the shares of the now defunct Southeast Bank. On September 19, 1991, Southeast Bank was closed by federal and state regulators, and the F.D.I.C. was named as its receiver. First Union purchased a majority of Southeast Bank's assets at the F.D.I.C. sponsored auction. Brandt filed the instant action on behalf of the shareholders (i.e., the Holding Company) of Southeast Bank against First Union Corporation and First Union National Bank (collectively,

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* Honorable Thomas M. Reavley, Senior U.S. Circuit Judge for the Fifth Circuit, sitting by designation.

First Union) for breach of contract and various statutory and common law torts. The F.D.I.C. intervened, and First Union filed a third-party complaint against the F.D.I.C. seeking contribution for any liability owed to the Holding Company. The cause found its way to district court where both the third-party complaint and the Holding Company's complaint were dismissed. Both the Holding Company and First Union appealed.

[1] We review the district court's dismissal under Rule 12(b)(6), accepting as true the plaintiffs' allegations. *South Florida Water Management Dist. v. Montalvo*, 84 F.3d 402, 406 (11th Cir. 1996). We affirm the district court's dismissal of the Holding Company's complaint. The third-party complaint is therefore moot.

In 1991, due to impending financial troubles of Southeast Bank, the Holding Company sought capital infusion through a merger with First Union. The parties entered into an agreement to explore such a possibility. The agreement permitted First Union to examine the internal financial documents of Southeast Bank on the condition that the information remain confidential. The agreement also precluded First Union from obtaining a financial position in the Holding Company or its subsidiaries, which included Southeast Bank. The only exception to this standstill provision was that First Union was able to bid at any F.D.I.C. auction.

[2] The Holding Company alleged that First Union leaked financial information concerning Southeast Bank to bank regulators resulting in the closure of the bank. The claim was that, after forcing Southeast Bank into receivership, First Union, acting on superior information, could acquire the bank. While there was a contractual relationship between First Union and the Holding company, the Holding Company's injury, if any, was the result of the

Comptroller of the Currency's decision to close Southeast Bank. In paragraph 39 of its complaint, the Holding Company alleges that when Southeast Bank was taken over in September of 1991, it was "solvent and profitable, with capital reserves substantially in excess of those required by law." This was clearly not the view of federal or state regulators who declared the bank insolvent.

Contending that Southeast Bank was liquid and should not have been closed by regulators, and being unable to sue federal regulators for their discretionary act of closing the bank, the Holding Company instead claims that the closure was precipitated by First Union's disclosures of confidential information to the federal regulators. Nevertheless, "[o]*nly* the Comptroller's final decision damaged [the Holding Company,] and no prior act or acts could have so caused the damage [alleged to have occurred by First Union] without the ultimate declaration of insolvency." *FDIC v. Irwin*, 916 F.2d 1051, 1055 (5th Cir.1990). The Comptroller's decision is not an act for which First Union can be held liable. *See id*, at 1053-56.

The Holding Company is attempting to do what it otherwise could not do, sue for its damages as a result of the government's alleged improper closure of Southeast Bank. During oral arguments and in its brief, the Holding Company half-heartedly recognizes its inability to sue federal regulators for their decision to close the bank. They have couched their suit in terms of the timing of the regulators' decision to close the bank, that is, that because of First Union's prompting the government officials decided to close the bank sooner than otherwise would have occurred. But underlying this claim (and throughout their complaint) is the Holding Company's belief that Southeast Bank was solvent and should not have been closed by federal regulators. Despite these efforts, the Holding Company cannot sue for the discretionary act of federal

regulators in closing the bank. Nor can they sue First Union for "precipitating" the government's ultimate action by disclosing information the government was entitled to have.

AFFIRMED.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO 94-1803-CIV-HURLEY

WILLIAM A. BRANDT, JR.,	)
Plaintiff,	)
vs.	)
FIRST UNION CORP., et al.,	)
Defendants	)

ORDER GRANTING DEFENDANTS' MOTIONS TO DISMISS, DISMISSING AND CLOSING CASE

This matter comes before the court upon defendants' First Union Corp. and the Federal Deposit Insurance Corp. ("FDIC") motions to dismiss. (Motions withdrawn from Bankruptcy Court. No docket numbers.) The court heard argument on these motions on February 15, 1995, and subsequently requested that the parties submit supplemental memoranda. The court has now reviewed those memoranda, and these matters are ripe for disposition.

I. BACKGROUND

This action was filed by the trustee for the estate of Southeast Banking Corp. ("Southeast Corp.") against First Union Corp. and First Union National Bank ("First Union Bank") (collectively, "First Union") for breach of contract and various statutory and common law torts. Southeast Corp. was a bank holding company that owned all shares in the now defunct Southeast Bank. As Trustee for Southeast Corp., plaintiff represents the interests of all its shareholders.

Upon a motion to dismiss, the court is required to take all factual allegations set forth in the complaint as true. Accordingly, the following narrative represents the facts as alleged by the Plaintiff.

In early 1991, when Southeast Bank was solvent, Southeast Corp. began looking for a strong merger partner to protect Southeast Bank from insolvency (and thus, to protect the share value of Southeast Corp. stock.) To this

end, in March of 1991, Southeast Corp. entered into an agreement with First Union Corp. whereby First Union would investigate a possible merger with Southeast Corp./Southeast Bank) collectively, "Southeast"). One term of the agreement was that Southeast would provide First Union with confidential Southeast Bank financial information and records. This information was to help First Union undertake an informed merger investigation. The agreement contained two terms germane to this action.

The first of these was a "confidentiality provision". Under this provision, First Union agreed to use the information only for the purpose of evaluating a possible friendly merger with Southeast. Otherwise, the information would be kept confidential. Furthermore, First Union agreed not to disclose the fact that Southeast was sharing this information, or that the two were discussing a possible merger.

The second relevant term was a so-called "standstill provision". Under that provision, First Union Corp. agreed not to acquire a significant interest in Southeast, or hire away any key Southeast employees, in any context other than a friendly merger. Unlike the confidentiality provision, this term contained an exception for "federally assisted regulatory transactions."

According to the complaint, First Union never intended to abide by the terms of the agreement. It wanted to acquire Southeast Bank, but not by a friendly merger. Instead, First Union hoped to drive Southeast Bank into insolvency, pressure the FDIC to intervene by disclosing the confidential information it obtained from Southeast, and then bid for Southeast Bank's assets while in receivership. As First Union would have access to confidential information that other bidders would not, it could determine with much greater accuracy Southeast Bank's value. With that information, First Union could easily outbid the other bidders -- which would have to account for value uncertainties in their bids -- while still paying much less than it would if it purchased shares in Southeast Corp. pursuant to a friendly merger. Finally, this type of acquisition would free First Union from certain other conditions a friendly merger agreement might impose.

In accord with the whole design, First Union investigated the confidential records of Southeast Bank, all the while assuring Southeast that its only intention was to investigate a friendly merger. Using this information, it then: 1) Issued "defamatory" press releases to undermine confidence in Southeast Bank (and thus, undermine both its solvency and the likelihood of its finding another friendly merger partner); 2) Urged lenders to call in outstanding Southeast Bank debt; and 3) Pressured the FDIC into rejecting other Southeast Corp. merger proposals, declaring Southeast Bank insolvent, and intervening. After the intervention, First Union made the winning bids for the Southeast Bank assets it desired, and because Southeast Bank went into receivership, the share value of Southeast Corp. dropped dramatically.

In this eleven count complaint, plaintiff seeks to recover against First Union on the following theories:

1) Breach of the confidentiality provision -- First Union volunteered confidential Southeast Bank information to the FDIC in violation of that term;

2) Breach of the standstill provision -- First Union's acquisition of Southeast Bank's assets was not pursuant to a friendly merger, and so violated that term;

3) Violation of Uniform Trade Secrets Act -- First Union willfully and maliciously misappropriated confidential Southeast information in violation of that section;

4) Trade slander -- First Union made false and defamatory public statements with the intent to undermine public confidence in Southeast Bank and make it more difficult for Southeast Bank to improve its financial situation;

5) Breach of fiduciary duty -- First Union owed a fiduciary duty to Southeast by virtue of entering into the agreement. First Union Corp. breached this duty when it: a) lobbied federal banking regulators to reject Southeast's merger and sell-off proposals, b) pressured federal banking regulators to declare Southeast Bank insolvent and intervene, and c) issued the false and defamatory statements;

6) Fraud in the inducement -- First Union fraudulently induced Southeast to enter into the merger investigation agreement while intending to breach that agreement and use the confidential information it obtained to acquire Southeast Bank on its own terms;

7) Negligent misrepresentation -- First Union induced Southeast to enter into the agreement, while negligently failing to inform Southeast that it would likely breach the agreement and use the information it obtained to acquire Southeast Bank on its own terms;

8) Promissory estoppel -- First Union "promised" to use the confidential information it obtained pursuant to the agreement only to examine the possibility of a friendly merger. Southeast then relied upon that promise to its detriment;

9) Claim for relief, constructive trust -- This is a claim for relief based upon First Union's alleged breach of fiduciary duty. Southeast seeks the establishment of a constructive trust over all of the assets of Southeast Bank unjustly acquired by First Union.;

10) Breach of implied covenant of good faith and fair dealing -- the above-described conduct breached this covenant; and

11) Tortious interference with actual and prospective business relationships -- First Union lobbied federal banking regulators to reject Southeast's friendly merger and sell-off proposals, and made defamatory public statements to undermine confidence in Southeast Bank. This was done with the intent to interfere with both existing and potential Southeast Corp. business relationships -- relationships it maintained through Southeast Bank -- and had that effect.

II. ANALYSIS

A. Direct vs. Derivative Claims

In support of their motion to dismiss, one of defendants' arguments is that plaintiff lacks standing to assert these claims. The basis of this argument is the following provision from the Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("FIRREA"):

(A) Successor to Institution

> The [FDIC] shall, as conservator or receiver, and by operation of law, succeed to –
>
> (i) all rights, titles, powers and privileges of the insured institution and of any stockholder, member, accountholder, depositor, officer or director of such institution and the assets of the institution.

12 U.S.C. §1821(d)(2)(A)(1) (emphasis added). This provision conveys to FDIC exclusive standing to assert any derivative claims in the name of the bank for which it has intervened as receiver. In re Southeast Banking Corp., 827 F. Supp. 742, 745 (S.D. Fla. 1993). Plaintiff responds to this argument by asserting that its claims are direct, not derivative, and thus fall outside the scope of the FDIC's rights of succession. Thus, the court's inquiry must be directed to the character of the claims involved here.

Whether a claim is considered direct or derivative is a matter of state law, and is determined from the complaint rather than the label employed by the parties. Id., citing In re Sunrise Securities Litigation, 916 F.2d 874, 882 (3d Cir. 1990). Under Florida Law, a direct claim is a claim for injuries suffered directly by the shareholder that are separate and distinct from injuries to all other shareholders, i.e., an injury separate from that sustained by the bank as a corporate entity. In re Southeast Banking Corp., supra, at 745; In re Sunrise Securities Litigation, supra, at 880; Wolfe v. American Savings and Loan Assoc., 539 So.2d 606 (Fla. 3d DCA 1989); Alario v. Miller, 354 So.2d 925, 926 (Fla. 4th DCA 1978); Citizen's National Bank v. Peters, 175 So.2d 925 (Fla. 2d DCA 1965). Stated another way, "[i]f the damages are only indirectly sustained by the stockholder as a result of injury to the [bank], the stockholder does not have a cause of action as an individual." Alario v. Miller, supra, at 926.

Applying this principle to the claims involved here, it is clear that counts three through seven, nine, ten and eleven are derivative, and therefore, may only be brought by the FDIC. Furthermore, after careful analysis, it appears that two of plaintiff's "contract" claims -- counts one and eight -- are also derivative. This leaves only count

two (breach of the standstill provision), which appears to be direct. For simplicity, these two categories will be dealt with separately.

In counts three through seven, nine, ten and eleven of the complaint, plaintiff alleges that by engaging in the conduct described above, First Union breached a number of duties to Southeast, thereby injuring Southeast Corp., and derivatively, its shareholders. However, it is clear from the complaint that the only "injury" Southeast Corp. suffered as a result of these alleged breaches was the diminution of it's share value resulting from injuries suffered by Southeast Bank. In other words, this injury was suffered only as a result of injuries to Southeast Bank. There is no meaningful distinction between the harms suffered by the holding company from those suffered by the bank. Southeast Corp. was injured by First Union's alleged disclosure of trade secrets, slander, breach of fiduciary duty, fraudulent inducement, negligent misrepresentation, breach of implied covenant of good faith and fair dealing, and international interference with existing and prospective business relationships,[1] ***because and only because*** Southeast Bank was injured by these. Consequently, any claim based upon such injuries can only be asserted derivatively.

Counts one and eight present a more difficult question. Because these claims are founded upon a contract (or promise) between Southeast Corp. and First Union, there is undisputably a legal duty running directly from First Union to Southeast Corp. However, examination of the contract provision or "promise" at issue here reveals that these were intended to benefit Southeast Bank directly, and Southeast Corp. only derivatively. Therefore, any

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[1] Count eleven, the count alleging intentional interference with existing and prospective business relationships, is so limited by the language of the complaint. Plaintiff claims that the relationships injured were those Southeast Corp. maintained "through the Bank's". (Complaint, p. 40.) In other words, plaintiff does not allege any injuries to relationships Southeast Corp. maintained or might maintain wholly independent of Southeast Bank.

injury suffered by Southeast Corp. as a result of their breach resulted **only because of** an injury suffered by Southeast Bank. Furthermore, as the intended beneficiary of the confidentiality provision, Southeast Bank would certainly have been able to assert count one itself, See Hialeah Hospital, Inc. v. Raventos, 425 So.2d 1205, 1206 (Fla. 3d DCA 1983), and could have asserted count eight itself on the theory that it was the promisee.

Because Southeast Corp. suffered no injury as a result of the breach of these covenants other than those which flowed from injuries to Southeast Bank, the court concludes that these claims should be dismissed as well.

B. Breach of Standstill Provision

The claim for breach of the standstill provision appears to involve a duty and potential injuries distinct from those owed to or suffered by Southeast Bank. Specifically, by breaching this provision, First Union could acquire a controlling interest in Southeast Corp. and take some action to diminish the value of its stock without necessarily affecting Southeast Bank. Thus, count two of the complaint appears to be direct. However, it is uncontested that the standstill provision contained an exclusion for "federally assisted regulatory transactions," and that exclusion is completely applicable to the circumstances in this case. As plaintiff alleges in the complaint, First Union acquired the assets of Southeast Bank as a consequence of federal regulatory intervention. Accordingly, count two cannot stand.

III. THE COURT'S CONTINUED EXERCISE OF JURISDICTION

After dismissal of all counts of the complaint, the only issues remaining in this action relate to the parties' respective responsibilities for costs and attorney's fees. As the FDIC is a potential party to these matters, the court shall retain jurisdiction over the action under 28 U.S.C. §1819.

Accordingly, it is hereby

ORDERED and **ADJUDGED** as follows:

1) Defendants' motions to dismiss are **GRANTED**. Counts one through eleven of the complaint

are **DISMISSED** with prejudice. This shall constitute final judgment with respect to all of these claims.

2) This court retains jurisdiction to resolve any disputes regarding costs or attorney's fees.

3) The Clerk of Court is directed to enter this case **CLOSED** for administrative purposes, and declare all pending motions **MOOT**.

Done and **SIGNED** in Chambers at West Palm Beach, Florida this 24 day of April, 1995.

Daniel T. K. Hurley
United States District Judge

Copies furnished to:

EUGENE E. STEARNS, ESQ., 2200 Museum Tower, 150 W. Flagler St., Miami, Fl 33130

BEN F. JOHNSON, III, ESQ., One Atlantic Center, 1201 W. Peachtree St., Atlanta, GA 30309-3424

HILLARIE BASS, ESQ., 1221 Brickell Ave., Miami, FL 33131

GREGORY F. TAYLOR, 550 17th St., NW, Room H-5076, Washington, DC 20429

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
SEP. 3, 1996
MIGUEL J. CORTEZ,
CLERK

UNITED STATES DISTRICT COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 95-4655

D.C. Docket Nos. 94-1803-CIV,
94-629-A/91-14561

IN RE: SOUTHEAST BANKING CORPORATION,

Debtor.

WILLIAM A. BRANDT, JR.,

Plaintiff-Appellant,
Cross-Appellee,

versus

FIRST UNION CORP., FIRST UNION NATIONAL BANK OF FLORIDA,

Defendants-Appellees,
Cross-Appellants,

FEDERAL DEPOSIT INSURANCE CORPORATION,

Third-Party-defendant
Appellee.

Appeals from the United States District Court for the Southern District of Florida

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Before TJOFLAT, Chief Judge, BLACK, Circuit Judge, and REAVLEY*, Senior Circuit Judge

JUDGMENT

These causes came to be heard on the transcript of the record from the United States District Court for the Southern District of Florida, and were argued by counsel;

UPON CONSIDERATION WHEREOF, it is now hereby ordered and adjudged by this Court that the judgment of the said District Court in these causes be and the same is hereby AFFIRMED;

It is further ordered that plaintiff-appellant pays defendants-appellees the costs on appeal to be taxed by the Clerk of this Court.

Entered: September 3, 1996

For the Court: Miguel J. Cortez, Clerk

By: _____

Deputy Clerk

ISSUED AS MANDATE: 11/18/96

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* Honorable Thomas M. Reavley, Senior U.S. Circuit Judge for the Fifth Circuit, sitting by designation.

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
NOV. 8, 1996
MIGUEL J. CORTEZ,
CLERK

IN THE UNITED STATES DISTRICT COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 95-4655

IN RE: SOUTHEAST BANKING CORPORATION,

Debtor.

WILLIAM A. BRANDT, JR.,

Plaintiff-Appellant,

Cross-Appellee,

versus

FIRST UNION CORP., FIRST UNION NATIONAL BANK OF FLORIDA,

Defendants-Appellees,

Cross-Appellants,

FEDERAL DEPOSIT INSURANCE CORPORATION,

Third-Party-defendant

Appellee.

On Appeal from the United States District Court for the Southern District of Florida

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ON PETITION(S) FOR REHEARING AND SUGGESTION(S) OF REHEARING EN BANC

(Opinion _____, 11th Cir, 19__, ___ F.2d ___).

Before: TJOFLAT, and BLACK, Circuit Judges, and REAVLEY, Senior Circuit Judge

PER CURIAM:

The Petition(s) for Rehearing are DENIED and no member of this panel nor other Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 35-5), the Suggestion(s) of Rehearing En Banc are DENIED.

ENTERED FOR THE COURT:

_____

UNITED STATES CIRCUIT JUDGE

ORD-42
(6/95)

Honorable Thomas M. Reavley, Senior U.S. Circuit Judge for the Fifth Circuit, sitting by designation.

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO. 94-11599

WILLIAM A. BRANDT, JR., as Chapter 7 Trustee of the Estate of Southeast Banking Corporation, Plaintiff, v. FIRST UNION CORPORATION, a North Carolina corporation, and FIRST UNION NATIONAL BANK OF FLORIDA, a national banking association with principal offices in Florida, Defendants.	**COMPLAINT FOR DAMAGES AND EQUITABLE RELIEF AND DEMAND FOR JURY TRIAL** Florida Bar No. 334243

Plaintiff, WILLIAM A. BRANDT, JR., as Chapter 7 Trustee of the Estate of Southeast Banking Corporation ("SEBC") (the "Trustee"), sues Defendants, FIRST UNION CORPORATION ("FUnCorp") and FIRST UNION NATIONAL BANK OF FLORIDA ("FUnBank", collectively with FUnCorp, are at times referred to as "FIRST UNION"), alleging as follows:

PRELIMINARY STATEMENT

1. The Trustee brings this action to recover money damages in excess of Five Hundred Million ($500,000,000.00) Dollars and obtain equitable relief against FIRST UNION in connection with their wrongful actions leading up to and attempting to influence the seizure by federal and state regulators, including the Office of the Controller of the Currency (the "OCC") and the Federal Deposit Insurance Corporation (the "FDIC"), of SEBC's principal asset, Southeast Bank, N.A. ("SEBNA"), as well as Southeast Bank of West Florida ("SBWF"; collectively

with SEBNA, the "Banks"), and their respective subsidiaries (SEBC, SEBNA, SBWF from time to time are referred to collectively as "SOUTHEAST"). As a result of FIRST UNION's wrongful conduct, as outlined below, SEBC sustained catastrophic economic injury that led immediately and directly to its bankruptcy filing and the resulting loss of hundreds of millions of dollars to its creditors, bondholders and equity security holders and the loss of more than 4,000 jobs of Florida residents.

IDENTITY OF PARTIES/JURISDICTION

2. On September 20, 1991, SEBC filed a voluntary petition for relief under Chapter 7 of the Bankruptcy Code, 11 U.S.C. §§101, et. seq., in the United States Bankruptcy Court for the Southern District of Florida (the "Bankruptcy Court"), docketed as Case No. 91-14561-BKC-SMW. The Trustee is the duly elected and qualified successor trustee of the SEBC Chapter 7 Estate, having been elected at a reconvened meeting of creditors on April 14, 1992, and confirmed in that election by order of the Bankruptcy Court dated April 28, 1992. At all times material, SEBC was a Florida corporation with its principal place of business in Miami, Florida, that served as a bank holding company as the same is defined by 12 U.S.C. §1841.

3. SEBC was formed in or about 1967. After its formation, SEBC became the bank holding company for SEBNA, which at that time was known as First National Bank of Miami, and for SBWF. Until the revocation of its charter in September 1991, SEBNA was a national bank engaged in commercial banking with its headquarters located in Miami, Florida. At all times material until the revocation of its charter in September 1991, SBWF was a Florida-chartered bank engaged in commercial banking in the State of Florida.

4. FUnCorp is a North Carolina bank holding company that is authorized to conduct business and conducts business in the State of Florida. At all times material, FUnCorp was and is subject to the jurisdiction of this Court pursuant to Section 48.193(1)(a), Florida Statutes (1993) (conducting business in Florida), Section 48.193(1)(b), Florida Statutes (1993) (committing a tortious

act in Florida), and Section 48.193(2), Florida Statutes (1993) (engaging in substantial and not isolated activity in Florida). Additionally, FUnCorp has agreed to submit to the jurisdiction of this Court as part of the Agreement described in further detail herein and which is attached to this Complaint as Exhibit "A".

5. FUnBank is a national banking association organized under federal law that maintains its principal place of business in the State of Florida. At all times material, FUnBank was and is subject to the jurisdiction of this Court pursuant to Section 48.193(1)(a), Florida Statutes (1993) (conducting business in Florida), Section 48.193(1)(b), Florida Statutes (1993) (committing a tortious act in Florida), and Section 48.193(2), Florida Statutes (1993) (engaging in substantial and not isolated activity in Florida). With the exception of a relative handful of directors' qualifying shares, FUnBank is wholly-owned, directly or indirectly, by FUnCorp. The acquisition of SEBNA's and SBWF's assets from the FDIC as receiver for both entities was effected by FIRST UNION through FUnBank.

ANALYSIS OF CLAIMS

6. Following his appointment, the Trustee undertook an investigation into the takeover of SEBNA. That investigation has been repeatedly frustrated by FIRST UNION and the FDIC, which seized virtually all of the business records of SEBC and SEBNA in September 1991, and have refused wrongfully to return these records to the Trustee. In fact, the Trustee has been forced to compel the production of certain of these documents in the possession of FIRST UNION and the FDIC in numerous actions in federal courts along the eastern seaboard of the United States.

7. The consistent, unrelenting opposition and lack of cooperation by FIRST UNION and the FDIC have prevented the Trustee from developing evidence of the full scope of FIRST UNION's wrongful conduct, which is described in this Complaint only in as much detail and specificity as is possible under circumstances where limited documents have been produced, many in incomplete or redacted form by virtue of broadly and often spuriously

asserted claims of privilege. Accordingly, the Trustee has been forced to allege certain allegations contained herein on the basis of information and belief; this has been necessitated due to FIRST UNION and the FDIC's exclusive possession and control of many of the materials that underlie those allegations. Thus, the allegations contained herein in no way constitute a full and complete description of the acts that form the basis of liability in this action and it is anticipated that these facts will be supplemented by additional evidence that will be produced during the discovery process.

FACTUAL BACKGROUND

8. In early 1991, due in large measure to a downturn in the South Florida economy, SEBNA had a significant portfolio of nonperforming loans. Furthermore, certain losses suffered by SEBNA in 1990, which had received widespread publicity, had caused the withdrawal by many nervous depositors of some or all of their monies on deposit at SEBNA. Nevertheless, SEBNA remained solvent, with a reported capital and loan loss reserve of well over $1 billion as of March 30, 1991. In fact, as of the date SEBNA and SBWF were seized by the FDIC and their assets simultaneously conveyed to FIRST UNION, SEBC was one of the premier bank holding companies in Florida, controlling more than $10 billion in assets through SEBNA, SBWF and other subsidiaries and affiliates.

9. Notwithstanding the extent of SEBNA's capital and reserves, by March 1991 the SEBC Board of Directors had determined that a business merger or other consolidation transaction with a strong national or regional financial institution could be in SEBC's best interests. Feelers seeking out appropriate merger partners were then sent out to a variety of large financial institutions, including Barnett Bank, NationsBank (f/k/a NCNB), Citibank, Bank of America and FIRST UNION.

10. On March 18, 1991, as a preliminary step to providing FIRST UNION with the confidential information regarding SOUTHEAST that FIRST UNION requested to enable it to analyze such a transaction, SEBC sent a draft of a proposed Confidentiality Agreement to Edward Crutchfield, Chairman of the Board of FUnCorp. After

certain changes were made to the Confidentiality Agreement at the request of counsel for FUnCorp, SEBC and FUnCorp entered into the Confidentiality Agreement (the "Agreement") on March 25, 1991. The Agreement provided that, upon certain limited terms and conditions, SEBC would provide certain confidential financial information, records and data to FIRST UNION for the limited purposes and uses described in the Agreement. A true and correct copy of the Agreement as executed on behalf of FIRST UNION by its Executive Vice President and Chief Financial Officer, Robert T. Atwood, is attached and made a part hereof as Exhibit "A".

11. The Agreement contained two separate principle covenants to be observed by FUnCorp. First, pages 1 and 2 of the Agreement imposed on FUnCorp the obligation (the "Confidentiality Covenant") to keep confidential all information furnished to it by SEBC and to use that information only in the analysis of a voluntary consolidation transaction with SOUTHEAST. Specifically, the Confidentiality Covenant provided that:

> the Evaluation Material will be used solely for the purpose of evaluating a possible transaction between you [FUnCorp] and the Company [SEBC], and that all information included in the Evaluation Material will be kept confidential by you [FUnCorp] and your directors, officers, employees, agents and advisors.

Exhibit "A", pp. 1-2.

12. Further, FUnCorp agreed in the Confidentiality Covenant not to:

> disclose to any person either the fact that information has been provided under [the Agreement] or that discussions or negotiations are taken or have taken place concerning the possible transactions between you [FUnCorp] and the company [SEBC], or any of the terms, conditions or other facts with respect to any such discussions or possible transaction.

Exhibit "A", p. 2.

13. The second principle obligation undertaken by FUnCorp (the "Standstill Provision") was contained on pages 3 and 4 of the Agreement. The Standstill Provision prohibited FUnCorp from taking certain actions - including acquiring a significant interest in SEBC or hiring away key employees of SEBC or SEBNA - in any context other than a consensual transaction between FUnCorp and SEBC under the Agreement. The Standstill Provision listed a series of exceptions under which the actions it otherwise prohibited could occur without FUnCorp's violating the Agreement. The last such exception, contained in clause "(iv)" on page 4 of the Agreement, provided that the obligations of the Standstill Provision would not apply to "federally assisted regulatory transactions." This exception was added to the Agreement at the written request of counsel to FUnCorp dated March 22, 1991 and amended only the Standstill Provision, not the Confidentiality Covenant of the Agreement.

14. At the time FIRST UNION entered into the Agreement, it was already considering a transaction far different from the type of consensual transaction that was contemplated under the Agreement and formed the basis upon which SEBC had agreed to provide to FIRST UNION extensive proprietary and confidential information regarding SOUTHEAST. Specifically, FIRST UNION's advisors were already analyzing whether the business transaction most beneficial to FIRST UNION would be to acquire SOUTHEAST's assets through the intervention of federal regulators.

15. Using the confidential information SOUTHEAST trustingly placed at FIRST UNION's disposal, FIRST UNION's strategy, undisclosed to and fraudulently concealed from SEBC, was actively to prod federal regulators to "resolve" as expeditiously as possible the situation at SOUTHEAST. This arrangement of achieving the closure of the Banks by the regulators and simultaneously acquiring many of those Banks' assets and liabilities from the regulators had the great added benefit to FIRST UNION that it would be far cheaper than the type of consensual transaction with SOUTHEAST contemplated by the Agreement.

16. Neither at the time it entered into the Agreement, nor for some four months thereafter, did FIRST UNION disclose to SEBC, from which it continued to obtain confidential information under the Agreement, that FIRST UNION was frequently and clandestinely communicating with federal banking regulators, including the FDIC, to discuss the expeditious "resolution" of SEBC/SEBNA. Similarly, FIRST UNION also failed to disclose to SOUTHEAST its intent and active efforts to obtain a federal intervention of the Banks. Those communications, including a series of meetings primarily with the FDIC, as well as the OCC and the Board of Governors of the Federal Reserve ("FRB"), occurred on a recurring basis through the months of April, May, June and July, 1991, all undisclosed to SOUTHEAST by FIRST UNION or any of those regulators. Additionally, those meetings and exchanges between FIRST UNION and the regulators took place at a time:

(1) when SOUTHEAST continued to have $1 billion or more in capital and loan loss reserves;

(2) long before any step had been taken by federal or state regulators to place SEBNA or SBWF in receivership or to seek bidders for the assets of those Banks;

(3) while those regulators were simultaneously discussing with SOUTHEAST other possible merger partners or investors; and

(4) while SOUTHEAST innocently continued to provide FIRST UNION with confidential information under the Agreement.

17. In complete and blatant disregard of its obligations under the Confidentiality Covenant of the Agreement, and in violation of the Standstill Provision of the Agreement as well, FIRST UNION in numerous instances used or alluded to that confidential information in their attempts to exert influence on federal regulators in order to bring about a rapid, federally-assisted takeover of

SEBNA in FIRST UNION's selfish interest, regardless of the consequences to SEBC, its shareholders and creditors, SEBNA and SBWF depositors, or the thousands of SOUTHEAST employees involved.

18. At any point during that lengthy period of time, FIRST UNION could and, under any reading of the Agreement or the nature of their relationship with SOUTHEAST, should have sought SEBC's permission to engage in such discussions with the FDIC or other federal regulators -- or even simply have informed SEBC, as a matter of courtesy, of those meetings and exchanges. However, FIRST UNION instead failed to inform or seek the consent of SEBC to the unbridled use of the confidential information for FIRST UNION's own purposes and against SEBC's interests -- despite the specific prohibition on such use contained in the Agreement.

19. Relying on both the terms of the Agreement and a misguided belief in the good faith and integrity of FIRST UNION and its senior management, SEBC wrongfully assumed that FIRST UNION was dealing honestly with it and made SOUTHEAST's confidential financial books and records and senior officers available to FIRST UNION and their representatives on an ongoing and continuous basis from the time the Agreement was executed. The information flowed to FIRST UNION over more than five months, and included on-site "due diligence" at various SOUTHEAST locations for a period of many weeks, conducted by hundreds of FIRST UNION representatives. The information provided to FIRST UNION by SEBC under the Agreement far exceeded the information that would otherwise have been available to FIRST UNION under any circumstances, including any due diligence that would have been available to them as part of a bid under FDIC auspices, other than where SEBC was voluntarily turning over such information. The information was turned over by SEBC in misplaced reliance on FIRST UNION's good faith commitment and representations to abide by both its written confidentiality obligations in the Agreement and general business and banking ethics.

20. FIRST UNION's insistence on the rapid "resolution" of the SEBNA/SBWF matter by federal

regulators was prompted by the knowledge that if SOUTHEAST continued to operate, SEBC might find other merger partners or investors, or a turnaround in the economy might result in a substantial improvement in its condition. This was particularly feasible in light of the more than $1 billion in capital and reserves that SOUTHEAST still enjoyed. In recognition of these possibilities, and in an attempt to hasten a government-sponsored takeover from which it intended to, and has in fact, derived enormous pecuniary benefit, FIRST UNION repeatedly stressed to the regulators that any delay in intervening SEBNA and SBWF would reduce the amount of money that would be bid by FIRST UNION in any eventual sale held as part of an intervention in the Banks.

21. As the foregoing paragraphs indicate, throughout the Spring and early Summer of 1991, unbeknownst to SEBC, the FDIC and other federal regulators were repeatedly meeting and communicating with FIRST UNION to discuss and decide the fate of SOUTHEAST. As reflected in a FIRST UNION internal memorandum, attached hereto as Exhibit "B", these clandestine meetings involved the Chairman of the FDIC and at least one member of the Board of Directors of the FDIC, who was a former Vice Chairman and long-time employee of FIRST UNION.

22. All of these meetings and other clandestine activities took place at a time when the Banks were solvent, SOUTHEAST had capital and reserves of more than a billion dollars on a consolidated basis, and the processes contemplated by federal and state law for the intervention of troubled financial institutions had not been commenced. All of these clandestine meetings and communications, aside from being profoundly unethical insofar as they allowed a direct business competitor of SOUTHEAST to pressure government regulators to put its competition out of business, took place without any express statutory basis or justification.

23. As FIRST UNION knew or should have known, no provision of federal law in effect in 1991 expressly authorized the FDIC or other federal regulators to meet and communicate with a competitor and prospective

acquirer of a bank which was then solvent, and for which the statutory process of intervention had not begun, to exchange confidential information regarding that institution and plan its fate, all without the bank's knowledge and consent. Therefore, the confidential meetings and communications between the FDIC, other federal regulators and FIRST UNION in April, May, June and early July of 1991 occurred completely outside of the express statutory framework for intervention and sale of a troubled financial institution.

24. As part of its strategy to bring about the early "resolution" of the Banks by federal and state regulators, with itself as the self-anointed "savior" and primary beneficiary of those entities' collapse, FIRST UNION also disseminated public statements which had the added benefit of further undermining public confidence in SOUTHEAST, thus making it more difficult for SOUTHEAST to surmount its economic problems without the type of "resolution" sought by FIRST UNION. FIRST UNION made these statements well aware of the likely effect they would have on SOUTHEAST, knowing that once the public's faith in any financial institution is sufficiently shaken, the withdrawal of deposits and business from that institution will eventually bring about its downfall.

25. As one example, on April 11, 1991, only 16 days after signing the Agreement and on the same day it was holding one of its early secret "resolution" meetings with the FDIC, FIRST UNION issued a press release denying that it had any interest in negotiating with SEBC regarding a possible merger or consolidation. At the same time, FIRST UNION was privately telling SEBC to ignore its public statements, which were allegedly being made to avoid adverse swings in the value of FUnCorp's stock on financial markets, and did not reflect the real intentions of FIRST UNION. Similarly, on June 17, 1991, approximately three days after some 250 of its employees descended on SOUTHEAST to conduct weeks of due diligence with SOUTHEAST's consent and assistance, all ostensibly as part of a possible consensual combination under the Agreement, FIRST UNION publicly announced that it had no interest in acquiring or combining with

SOUTHEAST unless federal assistance was available. FIRST UNION further mischaracterized its true intentions by publicly stating that while its employees had conducted some due diligence at SOUTHEAST, this had occurred in connection with some possible limited branch and asset purchases in North Florida. This latter statement, again, was a complete and blatant lie, publicly disseminated based on information known by FIRST UNION to be false and for the purpose of further undermining eroding public confidence in SOUTHEAST, thus putting additional pressure on federal and state regulators to "resolve" quickly the SOUTHEAST situation and strong-arming SOUTHEAST to be more receptive to whatever terms FIRST UNION might eventually offer.

26. Over the same period of months that FIRST UNION was meeting secretly with the FDIC and other federal banking regulators to bring about the speedy "resolution" of the Banks on terms sought by and beneficial to FIRST UNION, SEBC was seeking significant investment from a variety of other sources and was attempting to sell some of the Bank's branches and other assets.

27. At least in part as a result of FIRST UNION's persistent and persuasive efforts, and for unexplained reasons which puzzled SEBC's senior management at the time, in the late Spring and early Summer of 1991 the FDIC and other federal banking regulators became increasingly intransigent and resistant to efforts by SEBC to dispose of certain of its assets at a profit, or to find other solutions to SEBNA's problems. Thus, a portion of the Bank's branches that were to be sold to AmSouth and the possible securitization and sale of SOUTHEAST's credit card portfolio were either not approved by federal regulators or were received with little enthusiasm, killing the proposed deals.

28. Until approximately July 9, 1991, FIRST UNION declined to disclose to SEBC the nature of the combination arrangement they were planning to propose under the Agreement. At a meeting held in Miami on July 12, 1991, however, FIRST UNION finally disclosed its scheme for the "resolution" of the Banks to SEBC's board

of directors. Consistent with FIRST UNION's secret discussions with the FDIC and other federal regulators over the preceding months, the arrangement proposed by FIRST UNION would have required federal intervention and the closing of SEBNA, leaving the shareholders and bondholders of SEBC with a small and extremely contingent interest based primarily on the recoveries obtained from the Bank's troubled assets. FIRST UNION's proposed scheme, which effectively called upon SOUTHEAST to "invite" the regulators to seize the Banks and sell their assets to FIRST UNION in an assisted transaction offering only a remotely contingent return to SEBC bondholders and shareholders, was determined by SEBC's Board of Directors and its management to be unacceptable and unwarranted given the actual condition of SOUTHEAST.

29. It was at or about this time that FIRST UNION also first disclosed to SOUTHEAST that in gross disregard and breach of the Agreement and ethical business principles, and behind SOUTHEAST's back, FIRST UNION had been secretly discussing and planning SOUTHEAST's fate with the FDIC and other federal regulators since at least early April of 1991.

30. SOUTHEAST's negative reaction to the FIRST UNION proposal did not inhibit FIRST UNION's efforts to acquire the assets and branches of the Banks; to the contrary, FIRST UNION promptly proceeded to communicate even more forcefully with the FDIC, strongly urging in writing the speedy "resolution" of the Banks, proposing a format desired by FIRST UNION for that "resolution" and touting various reasons why FIRST UNION was particularly well-suited to carry out the execution. Among other information communicated to the FDIC by FIRST UNION were extensive and persuasive financial charts created to reflect the reasons why the proposed acquisition should require the seizure and closing of the Banks. Much if not virtually all of the information used to prepare those charts and projections was obtained by FIRST UNION from SOUTHEAST under the Agreement, and was now being used in contravention of that Agreement to destroy SOUTHEAST as an independent competitor to FIRST UNION. Perhaps even more

outrageous is that at the same time these communications were ongoing with the FDIC, FIRST UNION continued to assert in conversations and negotiations with SEBC that its effort to consummate an acceptable consensual arrangement under the Agreement had not been abandoned.

31. SEBNA began in or about mid-July of 1991 to borrow at the Federal Reserve Bank's ("FRB") discount window in order to maintain adequate liquidity. These borrowings continued until SEBNA was intervened on September 19, 1991. While on the date of its intervention the actual amount on loan to SEBNA from the FRB was approximately $550 million, the less than $40 million annual carrying or interest cost of that fully collateralized financing was of little significance when compared to the almost $1 billion in capital and reserves which SOUTHEAST maintained through the period of borrowing. Accordingly, had the progressive erosion of faith in SOUTHEAST's survival been halted, this financing would have been of little economic significance to SOUTHEAST and would not have had a material impact on its economic viability.

32. In light of FIRST UNION's numerous communications with federal banking regulators for the previous five months, it was not surprising that FIRST UNION's wish was granted when in approximately the third week of August 1991, the FDIC began seeking bids for a federally-assisted sale of the assets of the Banks. In connection with this sale, FIRST UNION was again granted the opportunity to conduct due diligence at SOUTHEAST, albeit on a far more limited scale than the extensive review previously conducted under the Agreement with SEBC's blessing.

33. On or about September 12, 1991, FIRST UNION submitted to the FDIC its completed application or "bid" to acquire the Banks. As that application clearly reflects, in complete disregard of the terms of the Agreement, FIRST UNION extensively used and relied on the information which had been voluntarily provided to it by SEBC on a confidential basis to formulate what turned out to be the winning bid to the FDIC.

34. On September 19, 1991, the FRB declared its approximately $550 million in discount window loans to SEBNA immediately due and payable by the close of business on that day, knowing that the Bank was unable to repay that significant amount of cash on the spot. The OCC then immediately declared it insolvent. Virtually simultaneously, the Florida Department of Banking and Finance ("DBF") declared SBWF insolvent. The OCC and the DBF then promptly named the FDIC receiver for each of the Banks, and immediately thereafter the FDIC proceeded with its prearranged sale of the vast majority of the Bank's assets to FIRST UNION in accordance with the terms of its winning bid.

35. As a result of the extensive confidential information which it had been provided by SEBC under the Agreement exclusively for the purpose of consideration of a consensual business consolidation, FIRST UNION was easily able to outbid its nearest competitors. This, in large part, was due to the fact that FIRST UNION, by its own written admission to the FDIC, had hundreds of people spend in excess of 40,000 hours performing due diligence on the Banks. This wealth of information voluntarily provided by SOUTHEAST on a confidential basis allowed FIRST UNION a remarkably high degree of confidence as to the value of SOUTHEAST's assets. Thus, reports indicate that FIRST UNION paid the FDIC approximately $81 million to acquire SEBNA and SBWF, while also agreeing to absorb 15% of the losses on SEBNA's troubled assets, the other 85% being absorbed by the FDIC as a subsidy to induce FIRST UNION to proceed. Moreover, as part of the bid acceptance, the FDIC agreed to purchase $150 million in preferred stock issued by FIRST UNION to enable it to go forward with the transaction.

36. Even more remarkable, the very next day after FIRST UNION acquired the assets of the Banks, having outbid its competitors dramatically, the Chairman of FUnCorp, Edward Crutchfield, was able to state confidently at a press conference that FIRST UNION would derive profits from the acquisition of at least $50 million in 1992, $100 million in 1993, and between $115 and $150 million each year for 1994 through 1996. Upon information and belief, the actual profits to date have far

exceeded even these aggressive estimates. Mr. Crutchfield was able to make these extraordinary public projections thanks to the extensive confidential information SOUTHEAST made available to FIRST UNION under the Agreement, and which FIRST UNION conveniently used in breach of the Agreement to win the FDIC bid.

37. Virtually until the moment when the Banks were intervened, SOUTHEAST continued to negotiate with other possible investors whose investment could well have allowed the survival of SOUTHEAST. These efforts were repeatedly undermined as the regulators, influenced in part by FIRST UNION, became increasingly unreceptive to any consensual arrangement sought by SOUTHEAST.

38. At the time the Banks were intervened, SOUTHEAST had capital and reserves on a consolidated basis of approximately $900 million. Despite this fact, the FDIC publicly projected as of the date of the intervention that its insurance fund would lose at least $350 million as a result of the intervention of the Banks. As the FDIC now publicly admits, the combined receiverships of SEBNA and SBWF will instead produce a significant surplus, even after payment of $152 million in subordinated debt to SEBC, and will require no unreimbursed expenditure from the FDIC fund.

39. Similarly, by all accounts, at the time it was taken over in September 1991, SBWF was solvent and profitable, with capital and reserves substantially in excess of those required by law.

40. Thus, even with the mammoth disruption to the Banks' assets and business over these past 2 1/2 years as a result of the intervention by the FDIC, their sale to FIRST UNION, and the wholesale firing by FIRST UNION and the FDIC of thousands of SOUTHEAST employees familiar with those assets and business, the capital and reserves of the Banks on September 19, 1991 remained more than adequate to meet those institutions' liabilities.

41. These undisputed facts heighten the tragedy of what happened to SEBC and its subsidiaries: the economic loss, suffering and injury felt by this community and the State of Florida, the thousands of employees who lost their jobs, all of those borrowers whose loans from the

Banks ceased to be funded or were accelerated after the intervention, and the disappearance from South Florida of a leading corporate citizen and benefactor, to mention only some of the victims and consequences of this debacle -- all of which were completely unnecessary.

COUNT I

Breach of Contract

(Breach of the Confidentiality Covenant)

The Trustee incorporates the allegations contained in paragraphs 1 through 41 as though fully set forth herein.

42. This is an action for breach of contract for which the Trustee is entitled to recover damages against FIRST UNION that exceed Five Hundred Million ($500,000,000) Dollars, exclusive of interest and costs.

43. As more fully alleged in paragraphs 1 through 41, SEBC and FIRST UNION entered into the Agreement on March 25, 1991. (Exhibit "A" hereto). Pursuant to the Confidentiality Covenant in the Agreement, FIRST UNION unconditionally agreed to keep certain financial information furnished by SEBC confidential, and further agreed to utilize that information solely for the purpose of evaluating a possible consensual business transaction between FIRST UNION and SEBC.

44. As more fully alleged in paragraphs 1 through 41, FIRST UNION breached the Confidentiality Covenant by, inter alia: wrongfully disclosing the confidential information to third parties without SEBC's knowledge or consent; improperly using and sharing the information to exert pressure and influence over the FDIC, the OCC, the FRB and possibly others in an effort to effectuate a premature and improper government-assisted takeover of SEBNA; improperly using the information in preparing its own bid package to acquire the assets of the Banks from the FDIC; and improperly interfering in various transactions SEBC sought to bring about with the consent of federal regulators.

45. As a direct result of FIRST UNION's breach of contract, SEBC suffered damages in excess of Five Hundred Million ($500,000,000) Dollars.

46. All conditions precedent to the filing and maintenance of this action by the Trustee have been waived, excused or performed.

WHEREFORE, the Trustee requests that this Court enter a judgment for damages against FIRST UNION in excess of Five Hundred Million ($500,000,000) Dollars, including but not limited to all of the profits FIRST UNION has derived as a result of committing the breaches alleged herein, plus all applicable interest and costs incurred by the Trustee in the prosecution of this action, and grant any such other and further relief as this Court deems just and proper.

COUNT II

Breach of Contract

(Breach of the Standstill Provision)

The Trustee incorporates the allegations contained in paragraphs 1 through 41 as though fully set forth herein.

47. This is an action for breach of contract for which the Trustee is entitled to recover damages against FIRST UNION that exceed Five Hundred Million ($500,000,000) Dollars, exclusive of interest of costs.

48. As more fully alleged in paragraphs 1 through 41, SEBC and FIRST UNION entered into the Agreement on March 25, 1991. Pursuant to the Confidentiality Covenant in the Agreement, FIRST UNION unconditionally agreed to keep certain financial information furnished by SEBC confidential, and further agreed to use the information only in its analysis of a consensual transaction under the Agreement.

49. As alleged in paragraph 12 of this Complaint, the Agreement also contained a Standstill Provision pursuant to which FIRST UNION was precluded from acquiring SEBC in anything other than a consensual transaction with SEBC. The Agreement specifically provided:

> You [FIRST UNION] acknowledge that the Evaluation Material is being furnished to you in consideration of your agreement that, for a period of eighteen (18) months from the date of this letter, neither you nor your affiliates . . . will (and neither you nor they will assist,

advise or encourage others to), directly or indirectly . . .

> (i) acquire, or agree, offer, seek or propose to acquire, ownership (or request permission to do any of the foregoing) of any of the Company's [SEBC] securities, assets or businesses, or any rights, warrants or options to acquire such ownership . . .
>
> (iv) enter into any discussions, negotiations, arrangements or understandings with any third party with respect to any of the foregoing, except as such may be in furtherance of discussions or negotiations between you and the Company [SEBC] . . .

50. The Standstill Provision contained various exceptions. Exception "(iv)" provided that the actions from which FUnCorp was prohibited from taking would not apply to "federally assisted regulatory transactions." While this exception allowed FUnCorp to bid at a FDIC sale of SEBC, it did not authorize FUnCorp to wrongfully disclose the confidential information provided by SEBC to third parties without SEBC's knowledge or consent; to improperly use the information actively to exert pressure and influence over the FDIC, the OCC, the FRB and other third parties in an effort to effectuate a premature and improper government - assisted takeover of SEBNA; to improperly use the information in preparing its own bid package to acquire SEBC from the FDIC; or to improperly interfere in various transactions SEBC sought to bring about with the consent of federal regulators.

51. By virtue of its engaging in these various prohibited activities, FUnCorp, with the active assistance and participation of FUnBank, breached the Standstill Provision of the Agreement. As a direct result of FIRST

UNION's breach of contract, SEBC suffered in excess of Five Hundred Million ($500,000,000) Dollars.

52. All conditions precedent to the filing and maintenance of this action by the Trustee have been waived, excused or performed.

WHEREFORE, the Trustee requests that this Court enter a judgment for damages against FIRST UNION in excess of Five Hundred Million ($500,000,000) Dollars, including but not limited to all of the profits FIRST UNION has derived as a result of committing the breaches alleged herein, plus all applicable interest and costs incurred by the Trustee in the prosecution of this action, and grant any such other and further relief as this Court deems just and proper.

COUNT III

(Breach Of Uniform Trade Secrets Act)

The Trustee incorporates the allegations contained in paragraphs 1 through 41 as though fully set forth herein.

53. This is an action against FIRST UNION for its violation of the Uniform Trade Secrets Act, §688.001, et. seq., Florida Statutes, and for resulting damages that exceed Five Hundred Million ($500,000,000) Dollars, exclusive of applicable interest, costs and attorneys' fees.

54. As more fully alleged in paragraphs 1 through 41, SEBC and FIRST UNION entered into the Agreement on March 25, 1991. Pursuant to the Agreement, FIRST UNION unconditionally agreed to keep certain financial information furnished by SEBC confidential, and further agreed to use the information for limited purposes, specifically in its analysis of a business merger transaction being contemplated by FIRST UNION and SEBC.

55. The foregoing conduct on the part of FIRST UNION constitutes a violation of the Uniform Trade Secrets Act. Additionally, FIRST UNION's misappropriation of confidential information was done wilfully and maliciously, thereby entitling SEBC to recover exemplary damages. Moreover, the award of damages must be based on both the actual loss incurred by SEBC and the amount of profits FIRST UNION has received from its acquisition of the Banks, that being the amount by which

FIRST UNION has been unjustly enriched by its improper use of trade secrets.

56. The Trustee has retained the undersigned counsel to prosecute this action, and has agreed to pay such counsel a reasonable fee for legal services provided. Pursuant to Fla. Stat. §688.005 (1993), the Trustee is entitled to recover attorneys' fees incurred in this matter.

WHEREFORE, the Trustee requests that this Court enter a judgment for damages against FIRST UNION in excess of Five Hundred Million ($500,000,000) Dollars, including but not limited to all of the profits FIRST UNION has derived as a result of committing the statutory violations described herein, plus exemplary damages as provided by Statute, plus all applicable interest, attorneys' fees and costs incurred by the Trustee in the prosecution of this action, and grant any such other and further relief as this Court deems just and proper.

COUNT IV

(Trade Slander)

57. The Trustee incorporates the allegations contained in paragraphs 1 through 41 as though fully set forth herein.

58. This is an action for trade slander for which the Trustee is entitled to recover damages against FIRST UNION that exceed Five Hundred Million ($500,000,000) Dollars, exclusive of applicable interest and costs.

59. As more fully alleged in paragraphs 1 through 41, SEBC and FIRST UNION entered into the Agreement on March 25, 1991. Pursuant to that Agreement, FIRST UNION unconditionally agreed to keep certain financial information furnished by SEBC confidential, and further agreed to use that information solely in its consideration of a consolidation transaction with SOUTHEAST.

60. Immediately after entering into the Agreement, FIRST UNION intentionally and systematically made false statements to the public with the specific intent of undermining public confidence in SOUTHEAST, thus making it much more difficult for SOUTHEAST to surmount the economic problems it was experiencing.

FIRST UNION made these statements knowing that their effect would be to further undermine SOUTHEAST as a financial institution, leading to the withdrawal of deposits and business from that institution and helping to cause its downfall.

61. FIRST UNION furthered its improper objectives by engaging in multiple acts whereby the financial status and commercial viability of SOUTHEAST was placed into question. Specifically, immediately after it entered into the Agreement with SEBC, FIRST UNION wilfully and maliciously misrepresented to the public the following: (a) that FIRST UNION had no interest in negotiating with SEBC regarding a possible merger or consolidation; (b) that FIRST UNION had no interest in acquiring or combining with SOUTHEAST unless federal assistance was involved; and (c) that, while FIRST UNION employees had conducted some due diligence at SOUTHEAST, this had occurred solely in connection with some possible limited branch and asset purchases in North Florida.

62. FIRST UNION made the foregoing misrepresentations for no reason other than to undermine and erode public confidence in SOUTHEAST, and to pressure federal and state regulators to "resolve" SOUTHEAST as quickly as possible. Further, as a result of these statements, public confidence in SOUTHEAST was eroded, increasing the number of depositors and businesses withdrawing their funds from the Bank.

63. The foregoing statements of FIRST UNION were false and known to be false at the time they were made, and were made solely for the purpose of defaming SOUTHEAST. Additionally, these false statements were communicated with wanton, wilful, reckless and intentional disregard for the rights of SOUTHEAST and, therefore, constitutes slander per se.

64. As a direct result of these slanderous statements, SOUTHEAST suffered damages in excess of Five Hundred Million ($500,000,000) Dollars. These damages are separate and distinct in nature and amount from those damages alleged to have been involved as a result of FIRST UNION's breach of the Agreement.

WHEREFORE, the Trustee requests that this Court enter a judgment for damages in the amount of Five Hundred Million ($500,000,000) Dollars against FIRST UNION, including but not limited to all of the profits FIRST UNION has derived as a result of committing the acts described herein, plus all applicable interest and costs incurred by the Trustee in the prosecution of this action, and grant any such other and further relief as this Court deems just and proper, such as punitive damages.

COUNT V

(Breach of Fiduciary Duty)

The Trustee incorporates the allegations contained in paragraphs 1 through 41 as though fully set forth herein.

65. This is an action for breach of fiduciary duty against FUnCorp for which the Trustee is entitled to damages that exceed Five Hundred Million ($500,000,000) Dollars, exclusive of interest and costs.

66. By virtue of entering into the Agreement, SEBC and FUnCorp entered into a fiduciary relationship. In connection with that relationship, SEBC reposed trust and confidence in FUnCorp that it would abide by its commitment of confidentiality. FUnCorp knowingly and voluntarily accepted this responsibility and, as a result, was bound to act in good faith and with due regard to SEBC's best interests.

67. After execution of the Agreement, SEBC made available its confidential books and records, and those of SEBNA and SBWF, to FIRST UNION, thereby evidencing its trust in FIRST UNION to keep its promise of confidentiality.

68. As more fully alleged in paragraphs 1 through 41, FIRST UNION breached its fiduciary duty to SEBC when, independent of, and separate from, its breach of the Agreement, FIRST UNION (1) met with federal banking regulators for the purpose of aggressively pressuring and influencing them to prematurely seize SEBNA; (2) issued false public pronouncements regarding the status, nature and purpose of its negotiations with SEBNA; and, (3) lobbied federal banking regulators to reject transactions proposed by SEBNA whereby SEBNA would sell certain of its assets at a

profit in order to improve its financial condition. These actions were committed so that FIRST UNION could purchase SEBNA and SBWF in the context of a government-assisted takeover at a discounted rate.

69. FIRST UNION intentionally engaged in conduct that it knew to be prejudicial to SOUTHEAST merely to further FIRST UNION's own pecuniary interest. This conduct was known to FIRST UNION to be detrimental to SEBC's interests and explicitly contrary to FIRST UNION's oral and written representations to SEBC.

70 As a direct result of FIRST UNION's breach of fiduciary duty, SEBC suffered damages in excess of Five Hundred Million ($500,000,000) Dollars. These damages are separate and distinct in nature and amount from those damages alleged in this Complaint to have been incurred as a result of FIRST UNION's breach of the Agreement.

WHEREFORE, SEBC requests that this Court enter a judgment in favor for damages against FIRST UNION in excess of Five Hundred Million ($500,000,000) Dollars, including but not limited to all of the profits FIRST UNION has derived as a result of committing the acts alleged herein, plus all applicable interest and costs incurred by the Trustee in the prosecution of this action, and grant any such other and further relief this Court deems just and proper, such as punitive damages.

COUNT VI

Fraud In The Inducement

The Trustee incorporates the allegations contained in paragraphs 1 through 41 as though fully set forth herein.

71. This is an action for fraud in the inducement against FIRST UNION for which the Trustee is entitled to damages that exceed Five Hundred Million ($500,000,000) Dollars, exclusive of interest and costs.

72. As more fully alleged in paragraphs 1 through 41, SEBC and FIRST UNION entered into the Agreement on March 25, 1991. Pursuant to the Agreement, FIRST UNION unconditionally agreed to keep certain financial information furnished by SEBC confidential, and further agreed to use the information only

in its analysis of a possible business merger between the parties as contemplated under the Agreement.

73. FIRST UNION knew at the time it entered into the Agreement that it might well use the confidential information to exert influence on federal regulators in order to effectuate a federally-assisted takeover of SEBNA, and thus be in position to purchase SEBNA and SBWF at a discounted rate. Armed with this intent, FIRST UNION induced SEBC to provide it confidential information under the guise of conducting due diligence in connection with a proposed consensual combination with SOUTHEAST.

74. FIRST UNION made various material misrepresentations to SEBC at the time the parties entered into the Agreement. These misrepresentations included, but were not limited to, the following: that FIRST UNION would use the confidential information solely to analyze a voluntary, consensual business combination with SOUTHEAST; that FIRST UNION would not disclose the confidential information to any third party without the knowledge and consent of SEBC; and that FIRST UNION was sincerely interested in pursuing negotiations with SEBC to negotiate some form of voluntary, consensual business combination with SOUTHEAST.

75. FIRST UNION knew at the time it made the foregoing misrepresentations that the same were false and misleading, and that it would breach the proposed Confidentiality Agreement. Moreover, at the time prior to the execution of this Agreement when these misrepresentations were being made, FIRST UNION was already being advised by its outside consultants that the only transaction it should pursue was a closed-bank transaction in which FIRST UNION would shift much of the risk of loss to the FDIC in exchange for wiping out the interests of SEBC and its shareholders. Accordingly, at the time FIRST UNION entered into the Agreement and made these misrepresentations, it had no intention of using the confidential information to be provided by SOUTHEAST solely to pursue a consensual combination with SOUTHEAST; rather, FIRST UNION used these misrepresentations as an opportunity to induce SEBC to enter into the Agreement so as to gain access to SEBC's

confidential books and records and utilize the disclosed information for its own gain.

76. SEBC justifiably relied upon the foregoing false and misleading misrepresentations without knowledge of their falsity or reason to know of their falsity.

77. In reliance on FIRST UNION's misrepresentations, SEBC made its confidential financial books and records and, more importantly, those of the Banks, freely available to FIRST UNION.

78. After executing the Agreement, FIRST UNION met and communicated with regulatory agencies, including but not limited to the FDIC, the OCC and the FRB, to encourage and actively support a federal takeover of SEBNA. Upon information and belief, during these meetings and communications, all of which took place without SEBC's knowledge or consent, FIRST UNION disclosed to the federal regulators its findings derived from its review of the confidential information being provided to it by SEBC. FIRST UNION thus unduly influenced the regulators to intervene SEBNA and SBWF, further pressuring them to take expeditious action by threatening that their own interest in the Bank would diminish or disappear unless the intervention took place rapidly.

79. As a direct result of FIRST UNION's fraud in the inducement, SEBC suffered damages in excess of Five Hundred Million ($500,000,000) Dollars. These damages are separate and distinct in nature and amount from those damages alleged to have been involved as a result of FIRST UNION's breach of the Agreement.

WHEREFORE, the Trustee requests that this Court enter a judgment for damages in the amount of Five Hundred Million ($500,000,000) Dollars against FIRST UNION, including but not limited to all of the profits FIRST UNION has derived as a result of committing the acts described herein, plus all applicable interest and costs incurred by the Trustee in the prosecution of this action, and grant any such other and further relief as this Court deems just and proper, such as punitive damages.

COUNT VII

(Negligent Misrepresentation)

The Trustee incorporates the allegations contained in paragraphs 1 through 41 as though fully set forth herein.

80. This is an action for negligent misrepresentation against FIRST UNION for which the Trustee is entitled to damages that exceed Five Hundred Million ($500,000,000) Dollars, exclusive of applicable interest and costs.

81. As more fully alleged in paragraphs 1 through 41, SEBC and FIRST UNION entered into the Agreement on March 25, 1991. Pursuant to the Agreement, FIRST UNION unconditionally agreed to keep certain financial information furnished by SEBC confidential, and further agreed to use the information solely in its analysis of a possible business merger between the parties as contemplated under the Agreement.

82. FIRST UNION negligently and/or intentionally made various material misrepresentations to SEBC at the time the parties entered into the Agreement. These misrepresentations included, but were not limited to, the following: that FIRST UNION would use the confidential information solely to analyze a voluntary, consensual business combination with SOUTHEAST; that FIRST UNION would not disclose the confidential information to any third party without the knowledge and consent of SEBC; and that FIRST UNION was sincerely interested in pursuing negotiations with SEBC to negotiate some form of voluntary, consensual business combination with SOUTHEAST.

83. FIRST UNION knew at the time it made the foregoing misrepresentations that the same were false, or the misrepresentations were made under circumstances in which FIRST UNION ought to have known of their falsity. FIRST UNION either knew at the time it made the foregoing misrepresentations that the same were false and misleading or made them negligently without consideration of whether it had any intention of complying with them. Moreover, at the time prior to the execution of the Agreement that these misrepresentations were being made, FIRST UNION was already being advised by its outside

consultants that the only transaction it should pursue was a closed-bank transaction in which FIRST UNION would shift much of the risk of loss to the FDIC in exchange for wiping out the interests of SEBC and its shareholders. FIRST UNION made these misrepresentations to induce SEBC to enter into the Agreement so as to gain access to SEBC's confidential books and records and utilize the disclosed information for its own gain.

84. SEBC justifiably relied upon the foregoing false and misleading misrepresentations without knowledge of their falsity or reason to know of their falsity.

85. In reliance on FIRST UNION's misrepresentations, SEBC made its confidential financial books and records and, more importantly, those of the Banks, freely available to FIRST UNION.

86. After executing the Agreement, FIRST UNION met and communicated with regulatory agencies, including but not limited to the FDIC, the OCC and the FRB, to encourage and actively support a federal takeover of SEBNA. Upon information and belief, during these meetings and communications, all of which took place without SEBC's knowledge or consent, FIRST UNION disclosed to the federal regulators its findings derived from its review of the confidential information being provided to it by SEBC. FIRST UNION thus unduly influenced the regulators to intervene SEBNA and SBWF, further pressuring them to take expeditious action by threatening that their own interest in the Bank would diminish or disappear unless the intervention took place rapidly.

87. As a direct result of FIRST UNION's negligent misrepresentations, SEBC suffered damages in excess of Five Hundred Million ($500,000,000) Dollars. These damages are separate and distinct in nature and amount from those damages alleged to have been involved as a result of FIRST UNION's breach of the Agreement.

WHEREFORE, the Trustee requests that this Court enter a judgment for damages in the amount of Five Hundred Million ($500,000,000) Dollars against FIRST UNION, including but not limited to all of the profits FIRST UNION has derived as a result of committing the acts described herein, plus all applicable interest and costs

incurred by the Trustee in the prosecution of this action, and grant any such other and further relief as this Court deems just and proper, such as punitive damages.

COUNT VIII

(Promissory Estoppel)

The Trustee incorporates the allegations contained in paragraphs 1 through 41 as though fully set forth herein.

88. This is an action for promissory estoppel against FIRST UNION for which the Trustee is entitled to equitable relief including, but not limited to, reaping the benefits of the Agreement entered between FIRST UNION and SEBC.

89. As more fully alleged in paragraphs 1 through 41, FIRST UNION made certain promises to SEBC by which it unconditionally agreed to keep certain financial information furnished by SEBC confidential, and further agreed to use the information solely in its analysis of a possible business merger between the parties as contemplated under the Agreement.

90. FIRST UNION made various material representations to SEBC including, but not limited to, the following: that FIRST UNION would use the confidential information solely to analyze a voluntary, consensual business combination with SOUTHEAST; that FIRST UNION would not disclose the confidential information to any third party without the knowledge and consent of SEBC; and that FIRST UNION was sincerely interested in pursuing negotiations with SEBC to negotiate some form of voluntary, consensual business combination with SOUTHEAST.

91. FIRST UNION knew or should have known that these misrepresentations would induce SEBC to alter its competitive position in the banking industry by providing FIRST UNION the requested confidential information contained in SOUTHEAST's books and records.

92. SEBC justifiably relied upon the foregoing false and misleading representations without knowledge of their falsity or reason to know of their falsity.

93. In reliance on FIRST UNION's misrepresentations, SEBC changed its competitive position

in the banking industry by making its confidential financial books and records and, more importantly, those of the Banks, freely available to FIRST UNION.

94. After executing the Agreement, FIRST UNION met and communicated with regulatory agencies, including but not limited to the FDIC, the OCC and the FRB, to encourage and actively support a federal takeover of SEBNA. Upon information and belief, during these meetings and communications, all of which took place without SEBC's knowledge or consent, FIRST UNION disclosed to the federal regulators its findings derived from its review of the confidential information being provided to it by SEBC. FIRST UNION thus unduly influenced the regulators to intervene SEBNA and SBWF, further pressuring them to take expeditious action by threatening that their own interest in the Bank would diminish or disappear unless the intervention took place rapidly.

95. As a direct result of FIRST UNION's misconduct, SEBC suffered damages in excess of Five Hundred Million ($500,000,000) Dollars. These damages are separate and distinct in nature and amount from those damages alleged to have been involved as a result of FIRST UNION's breach of the Agreement.

WHEREFORE, the Trustee requests that this Court enter a judgment for damages in the amount of Five Hundred Million ($500,000,000) Dollars against FIRST UNION, including but not limited to all of the profits FIRST UNION has derived as a result of committing the acts described herein, plus all applicable interest and costs incurred by the Trustee in the prosecution of this action, and grant any such other and further relief as this Court deems just and proper, such as punitive damages.

COUNT IX

(Establishment Of Constructive Trust)

The Trustee incorporates the allegations contained in paragraphs 1 through 41 as though fully set forth herein.

96. This is an action to establish a constructive trust and obtain equitable relief against FIRST UNION.

97. By virtue of entering into the Agreement, SEBC and FIRST UNION entered into a confidential

relationship. In connection with that relationship, SEBC justifiably reposed trust and confidence in FIRST UNION. Due to the fraud and undue influence exercised by FIRST UNION, equity must impose a constructive trust to prevent FIRST UNION from being unjustly enriched at the expense of SEBC.

98. As more fully alleged in paragraphs 1 through 41, FIRST UNION's actions as stated herein are independent of, and separate from, its breach of the Agreement, insofar as FIRST UNION (1) met with federal banking regulators for the purpose of aggressively pressuring and influencing them to rapidly seize SEBNA; (2) issued false public pronouncements regarding the status, nature and purpose of its negotiations with SEBNA; and, (3) lobbied federal banking regulators to reject transactions proposed by SOUTHEAST whereby SOUTHEAST would sell certain of its assets at a profit in order to improve its financial condition. These actions were committed as part of a scheme to defraud SEBC as set forth herein so that FIRST UNION could purchase SEBNA and SBWF in the context of a government-assisted takeover at a discounted rate.

99. FIRST UNION abused its confidential relationship with SEBC by engaging in the conduct described herein and, as a result, gained an advantage over SEBC which it should not be permitted to retain under fundamental principles of equity and good conscience. SEBC seeks equitable relief because it has no adequate remedy at law.

100. Equity compels this Court to impose a constructive trust over all assets of SOUTHEAST acquired by FIRST UNION as a result of their wrongful conduct.

WHEREFORE, SEBC requests that this Court enter a judgment in favor of the Trustee placing a constructive trust over all assets acquired from SOUTHEAST by FIRST UNION as a result of its inequitable and/or fraudulent conduct and any other and further relief this Court deems just and proper.

COUNT X

(Breach Of Implied Covenant Of Good Faith And Fair Dealing)

The Trustee incorporates the allegations contained in paragraphs 1 through 41 as though fully set forth herein.

101. This is an action for breach of an implied covenant of good faith and fair dealing for which the Trustee is entitled to recover damages against FIRST UNION that exceed Five Hundred Million ($500,000,000) Dollars, exclusive of pre-judgment interest and costs.

102. As more fully alleged in paragraphs 1 through 41, SEBC and FIRST UNION entered into the Agreement on March 25, 1991. By entering into the Agreement, FIRST UNION assumed an implied duty to act in good faith and in accordance with principles of fair dealing.

103. As more fully alleged in paragraphs 1 through 41, FIRST UNION unconditionally agreed under the Agreement to keep certain financial information furnished by SEBC confidential, and further agreed to use the information only in its analysis of a consolidation transaction between the parties.

104. FIRST UNION knowingly violated its implied covenant of good faith and fair dealing by utilizing the information it obtained from SOUTHEAST in a way that was clearly outside of what was contemplated by the parties at the time the Agreement was executed by, inter alia: wrongfully disclosing the confidential information to third parties without SEBC's knowledge or consent; improperly using the information to exert pressure and influence over the FDIC, the OCC, the FRB and possibly others in its effort to effectuate a rapid and unnecessary government take-over of SEBNA and SBWF; improperly using the information in preparing its own bid package and negotiating with the FDIC to purchase SEBNA and SBWF; and making various detrimental public announcements to the effect that it would not consider acquiring SOUTHEAST in anything other than a government-assisted transaction, accelerating the withdrawal by SEBNA's depositors of substantial sums from their accounts which, in turn, further decreased SEBNA's liquidity levels and

frightened off other potential investors and merger partners in SOUTHEAST.

105. As a direct result of FIRST UNION's breach of its implied duty of good faith and fair dealing, SEBC suffered damages in excess of Five Hundred Million ($500,000,000) Dollars.

WHEREFORE, the Trustee requests that this Court enter a judgment for damages in excess of Five Hundred Million ($500,000,000) Dollars against FIRST UNION, including but not limited to all of the profits FIRST UNION has derived as a result of committing the acts described herein, plus all applicable pre-judgment interest and costs incurred by the Trustee in the prosecution of this action, and grant any such other and further relief as this Court deems just and proper.

COUNT XI

(Tortious Interference With Actual and Prospective Business Relationships)

The Trustee incorporates the allegations contained in paragraphs 1 through 41 as though fully set forth herein.

106. This is an action for tortious interference with actual and prospective business relationships for which the Trustee is entitled to recover damages against FIRST UNION that exceed Five Hundred Million ($500,000,000) Dollars, exclusive of pre-judgment interest and costs.

107. Prior to September 19, 1991, SEBC maintained countless business relationships, both directly and indirectly through the Banks, with investors, customers and depositors, and had a reasonable expectation of continuing those relationships in the future without any unjustified interference of others.

108. At all times material, FIRST UNION knew and had reason to know of these business relationships, and of SEBC's expectation of continuing those relationships in the future.

109. As more fully alleged in paragraphs 1 through 41, FIRST UNION knowingly and intentionally interfered in SEBC's business ongoing and future relationships when, independent of, and separate from, its breach of the Agreement, FIRST UNION: (1) met with

federal banking regulators for the purpose of aggressively pressuring and influencing them to seize SEBNA; (2) issued false public pronouncements regarding the status, nature and purpose of its negotiations with SEBNA; and, (3) lobbied federal banking regulators to reject transactions proposed by SOUTHEAST whereby SOUTHEAST would sell certain of its assets at a profit in order to improve its financial condition. These actions were unjustifiable in that they were committed so that FIRST UNION could purchase SEBNA and SBWF in the context of a government-assisted takeover at a discounted rate.

110. FIRST UNION unjustifiable interference ultimately destroyed SEBC's existing and prospective business relationships.

111. As a direct result of FIRST UNION's tortious conduct, SEBC suffered damages in excess of Five Hundred Million ($400,000,00) Dollars. These damages are separate and distinct in nature and amount from those damages alleged to have been involved as a result of FIRST UNION's breach of the Agreement.

WHEREFORE, the Trustee requests that this Court enter a judgment for damages in the amount of Five Hundred Million ($500,000,000) Dollars against FIRST UNION, including but not limited to all of the profits FIRST UNION has derived as a result of committing the acts described herein, plus all applicable interest and costs incurred by the Trustee in the prosecution of this action, and grant any such other and further relief as this Court deems just and proper, such as punitive damages.

DEMAND FOR JURY TRIAL

Plaintiff requests that this matter be tried before a jury.

Respectfully submitted,

GREENBERG, TRAURIG, HOFFMAN, LIPOFF, ROSEN & QUENTEL, P.A.
Attorneys for Plaintiff
1221 Brickell Avenue
Miami, Florida 33131
Telephone: (305) 579-0500

By:_____

HILARIE BASS
MARK D. BLOOM
CARLOS E. LOUMIET